

Remarks

The above Amendments and these Remarks are in reply to the Office Action mailed October 4, 2004. Claims 1-16, 31, 53, 55, 56, 58-152 and 154-160 are currently pending in the Application. In the Office Action, the claims 1-16, 31-43, 45-50, 82-99 and 101-131 were allowed. In addition, claims 51, 56, 58, 59, 63-66, 71, 74-81, 132, 134-135, 140-143, 147, 150, and 154-160 were rejected and claims 44, 52-53, 55, 60-62, 67-70, 72-73, 100, 133, 136-139, 144-146, 148-149, and 151-152 were objected to. Within the present response, the Applicants amended claims 31-34, 42-44, 51, 60, 76-78, 100, 132, and 154-160. Reconsideration of the rejections is respectfully requested.

Claim Objections

Within the Office Action, Claims 44, 60 and 100 were objected to for various informalities. The Applicants have amended Claims 44, 60 and 100 accordingly. The Applicants respectfully submit that Claims 40, 60 and 100 are now in a condition for allowance.

Claim Rejections under 35 U.S.C. 112

Within the Office Action, Claims 157-159 were rejected under 35 U.S.C. 112, 2nd paragraph, as being indefinite for lack of antecedent basis. The Applicants have amended Claims 157-159 accordingly to correct these defects. The Applicants thus respectfully submit that Claims 157-159 are now in a condition for allowance.

Claim Rejections under 35 U.S.C. 101

Within the Office Action, Claims 76-81 and 154-156 were rejected under 35 U.S.C. 101 as being drawn to non-statutory subject matter. The Applicants have amended Claims 157-159 accordingly to correct these defects. The Applicants thus respectfully submit that Claims 157-159 are now in a condition for allowance.

Claim Rejections under 35 U.S.C. 102

Within the Office Action, Claims 51, 74-78, 80 and 81 were rejected under 35 U.S.C. 102(e) as being anticipated by U.S. Patent 6,770,095 to Grinberg et al. (hereinafter Grinberg). The Applicants respectfully traverse.

Grinberg teaches an intervertebral motion disc having an articulation interface and a locking interface. Figure 11 of Grinberg illustrates a projection 601 extending from the peripheral portion 603 of an inner surface of a first prosthetic vertebral endplate which fits into a recess 605 extending from a peripheral portion 607 of an inner surface of a second prosthetic vertebral endplate. However, Grinberg goes not teach an elongated socket as recited in amended Independent Claim 51. Accordingly, Claim 51 is distinguishable over Grinberg and is in a condition for allowance.

Claims 74-78, 80 and 81 were also rejected as being anticipated by Grinberg. Claims 74-78, 80 and 81 are dependent on independent Claim 51. As stated above, Claim 51 is allowable over Grinberg. Accordingly, Claims 74-78, 80 and 81 are allowable for being dependent on an allowable base claim.

Within the Office Action, Claims 132, 134, 135, 140, 141, 147, 154-156, 158 and 159 were rejected under 35 U.S.C. 102(e) as being anticipated by U.S. Patent 6,740,118 to Eisermann et al. (hereinafter Eisermann). The Applicants respectfully traverse.

Eisermann teaches an intervertebral prosthetic joint implant which includes channels 57 on the sides of the implant, whereby the channels 57 are configured to engage a corresponding portion of a surgical instrument to aid in insertion and manipulation of the implant into the patient. Claim 132 of the present invention has been amended to recite that the channel is located on an inner surface of the second plate. Eisermann does not teach that the channel 57 is located on the inner surface of the instrument. For at least these reasons, Claim 132 is distinguishable over Eisermann. Accordingly, Claim 132 is in a condition for allowance.

Claims 134, 135, 140, 141, 147, 154-156, 158 and 159 were also rejected as being anticipated by Eisermann. Claims 134, 135, 140, 141, 147, 154-156, 158 and 159 are dependent on independent Claim 132. As stated above, Claim 132 is allowable over Eisermann. Accordingly, Claims 134, 135, 140, 141, 147, 154-156, 158 and 159 are allowable for being dependent on an allowable base claim.

Claim Rejections under 35 U.S.C. 103

Within the Office Action, Claims 55, 58, 59, 63, 64 and 71 were rejected under 35 U.S.C. 103(a) as being unpatentable over Grinberg in light of French Reference 2,805,985 to Viart et al. The Applicants respectfully traverse.

Claims 134, 135, 140, 141, 147, 154-156, 158 and 159 were also rejected as being anticipated by Eisermann. Claims 134, 135, 140, 141, 147, 154-156, 158 and 159 are dependent on independent Claim 132. As stated above, Claim 132 is allowable over Eisermann. Accordingly, Claims 134, 135, 140, 141, 147, 154-156, 158 and 159 are allowable for being dependent on an allowable base claim.

Within the Office Action, Claim 160 was rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent 6,228,118 to Gordon. The Applicants respectfully traverse. Nonetheless, to further expedite prosecution, the Applicants have amended Claim 160 to overcome the rejection. Accordingly, Claim 160 is allowable over Gordon individually or in combination.

In light of the above, it is respectfully submitted that all of the claims now pending in the subject patent application should be allowable, and a Notice of Allowance is requested. The Examiner is respectfully requested to telephone the undersigned if he can assist in any way in expediting issuance of a patent.

The Commissioner is authorized to charge any underpayment or credit any overpayment to Deposit Account No. 06-1325 for any matter in connection with this response, including any fee for extension of time, which may be required.

Respectfully submitted,

Date: 12/22/04

By: S. Bhattacharya
Suvashis Bhattacharya
Reg. No. 46,554

Customer No. 23910
FLIESLER MEYER LLP
Four Embarcadero Center, Fourth Floor
San Francisco, California 94111-4156
Telephone: (415) 362-3800